(3)

No. 85-1897

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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IN THE

Supreme Court of the United States

October Term, 1985

WALLACE MAC KECHNIE, MARIE MONOKI STIDOLPH, CATHERINE MONOKI DILEILLA, GEORGE H. WILLIAMS, CHESTER MALESZKA, AMY JONES, CHARLES JONES, HARRY W. BRILL, JR., NATALIE B. BRILL, GENEVA CECIL, JAMES MAC GILFREY, YVONNE MAC GILFREY and LEANDA BURGESS individually, and on behalf of all other persons similarly situated,

Petitioners,

against

COUNTY OF SULLIVAN; and DANIEL L. BRIGGS, as County Treasurer, County of Sullivan; COUNTY OF ORANGE; JOHN S. KELLER, as Commissioner of Finance of the County of Orange; COUNTY OF DUTCHESS; M. PHILIP AMODEO, as Commissioner of Finance of the County of Dutchess; COUNTY OF RENSSELAER, WILLIAM ST. JOHN, as Chief Fiscal Officer of the County of Rensselaer; COUNTY OF BROOME, BRIAN LIND, as Commissioner of Finance of the County of Broome; and the STATE OF NEW YORK, individually and on behalf of all Counties, County Treasurers, County Commissioners of Finance and County Chief Fiscal Officers in the State of New York,

Respondents.

ON CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF NEW YORK

Brief in Opposition of Respondent State of New York

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Dated: June 12, 1986

Question Presented

Whether certiorari is warranted based upon a claimed conflict of Supreme Court decisions when, in reality, this Court has consistently upheld, as against due process challenges, tax foreclosure statutes which worked a total forfeiture *if* delinquent taxpayers fail to avail themselves of lengthy periods of redemption when those taxpayers indisputably received notice and an opportunity to be heard on the underlying tax obligations.

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WALLACE MAC KECHNIE, MARIA MONOKI STIDOLPH, CATHERINE MONOKI DILEILLA, GEORGE H. WILLIAMS, CHESTER MALESZKA, AMY JONES, CHARLES JONES, HARRY W. BRILL, JR., NATALIE B. BRILL, GENEVA CECIL, JAMES MAC GILFREY, YVONNE MAC GILFREY and LEANDA BURGESS,

Petitioners,

vs.

COUNTY OF SULLIVAN; and DANIEL L. BRIGGS, as County Treasurer, County of Sullivan; COUNTY OF ORANGE; JOHN S. KELLER, as Commissioner of Finance of the County of Orange; COUNTY OF DUTCHESS; M. PHILIP AMODEO, as Commissioner of Finance of the County of Dutchess; COUNTY OF RENSSELAER, WILLIAM ST. JOHN as Chief Fiscal Officer of the County of Rensselaer; COUNTY OF BROOME: BRIAN LIND, as Commissioner of Finance of the County of Broome; and the STATE OF NEW YORK, individually and on behalf of all other Counties, County Treasurers, County Commissioners of Finance and County Chief Fiscal Officers in the State of New York,

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Facts

The undisputed facts, as found by the court below, are as follows. Each petitioner received notice by mail of their real property tax obligation. App 6a. Each petitioner failed to pay the taxes due. App 6a. Proper advance notice of an impending tax sale was given. App 6a. The respondent counties purchased the properties at tax sales without competitive bidding. App 6a. Petitioners were permitted to redeem their properties during a three-year period. App 6a. Within six months of the expiration of the redemption period, each petitioner received notice by mail of the upcoming expiration. App 6a. None of the petitioners redeemed. App 6a. The respondent counties thereafter took deeds to the properties. App 6a. The counties sold most of the properties at public auctions and retained the proceeds in excess of taxes and penalties due. App 6a.

Argument

The writ of certiorari should be denied. There is no actual conflict of decisional authority. Petitioners simply misread the cases in a strained attempt to claim conflicting precedents.

United States v. Lawton, 110 US 146 (1884), upon which petitioners principally rely, was not a constitutional decision, but one of statutory construction. *Lawton* held that federal statutes required refund of any surplus value. *Id.* at 149. Obviously, the statute may have been unconstitutionally applied if that taxpayer was deprived of his statutory entitlement. Thus, the language of *Lawton* (p 150) quoted by petitioners (Pet Br, p 6) does not establish any constitutional right to refund of excess value after a tax sale.

Nelson v. City of New York, 352 US 103 (1956), not only upheld a tax forfeiture statute as constitutional, but even distinguished *Lawton* as only a statutory construction decision (*see* 352 US at 110). *Nelson* also cited with approval (*see* 352 US at 110 & n 9) *Chapman v. Zobelein,* 237 US 135 (1915), which squarely holds that once an owner is given a right of hearing on the original assessment, no violation of due process occurs if property worth far in excess of the assessment is later forfeited.

Thus, there is no conflict whatsoever between those decisions and *Balthazar v. Mari Ltd.,* 301 F Supp 103 (ND Ill), *affd,* 396 US 114 (1969). Such tax statutes have uniformly been upheld as constitutional. *See also, Turner v. New York,* 168 US 90, 94 (1897) (two-year redemption period was valid as a mere statute of limitations); *Leigh v. Green,* 193 US 79, 87-89 (1904) (summary foreclosure permissible upon expiration of redemption period). Here, there is a three-year redemption period.

Nor is *Mennonite Board of Missions v. Adams,* 462 US 791 (1983), to the contrary. *Mennonite* held that mere notice by publication affronts due process when a mortgagee receives no notice of a pending tax sale until *after* the redemption period had expired. *Id.* at 794-797. That holding does not assist petitioners. Nothing in *Mennonite* altered the well settled substantive consequences which attend a failure timely to exercise a right of redemption once adequate notice of a tax sale has been received.

Furthermore, this Court has recently upheld statutes by which all property rights were forfeited if not timely asserted. *Texaco, Inc. v. Short,* 454 US 516, 520, 524-525 (1982); *United States v. Locke,* ____ US ____, 105 S Ct 1785, 1797-1798 (1985).

Petitioners have failed to demonstrate any conflict of decisions. The law is well settled that statutes affording advance notice of tax obligations, an opportunity to be heard *and* lengthy periods of redemption are constitutional. The statute challenged here satisfies each of those criteria.

CONCLUSION

The writ should be denied.

Dated: Albany, New York
June 12, 1986

Respectfully submitted,

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